

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Wild Goose Storage, Inc. to  
Amend its Certificate of Public Convenience and  
Necessity to Expand and Construct Facilities for  
Gas Storage Operation.

Application 01-06-029  
(Filed June 18, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON REQUEST FOR OFFICIAL NOTICE AND IDENTIFYING  
ENVIRONMENTAL IMPACT REPORT FOR THE RECORD**

This ruling addresses two outstanding matters, the pending requests for official notice and the need to identify the Environmental Impact Report (EIR) for the record.

**Requests for Official Notice**

Pacific Gas and Electric Company (PG&E) has filed two requests for official notice in this proceeding.

First Request. The first, filed on January 11, 2002, is unopposed. It asks the Commission to take official notice of the following:

- 2001 Index of Prices of Spot Gas Delivered to Pipelines from Platt's *Inside FERC's GAS Market Report*, January 4, 2002 (Index to Prices).
- California Department of Water Resources, Executive Update: Hydrologic Conditions in California, January 7, 2002 (Executive Update)
- California Public Utilities Commission, California Natural Gas Infrastructure Outlook, 2002-2006 (Infrastructure Outlook)

PG&E argues that "these documents are relevant to the issues under consideration in this proceeding" ... and that because the Commission has taken

notice, in the past, of various periodicals that report market trends and of its own reports, it should do so now. Rule 73 of the Commission's Rules of Practice and Procedure provides: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California." The California Evidence Code separately lists those things subject to mandatory judicial notice (Evid. Code § 451) and those things subject to permissive judicial notice (Evid. Code § 452). None of the documents identified above fall within the categories of things listed in Evid. Code § 451, so the question becomes - not must, but may - the Commission take official of the documents. The only permissive category that potentially fits is Evid. Code § 452 (h) which includes "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

For the purposes of this proceeding, the Index to Prices and Executive Update meet the requirements of Evid. Code § 452 (h), since both report data, the former, spot prices and the latter, snowpack water content, precipitation levels at selected cities and measure storage at key reservoirs. The Infrastructure Outlook, an interpretative document, does not meet the requirements of Evid. Code § 452 (h). In fact the disclaimer at the front of the report states:

In order to prepare a 5-year forecast of natural gas demand, the CPUC has relied extensively upon data provided by the utilities, the CEC, and other parties. As part of the CPUC's on-going regulation of the natural gas industry, some of the data and assumptions contained in this report are currently, or may in the future, be contested in proceedings before the CPUC, FERC and other regulatory/judicial forums.

To avoid pre-judging the outcome of these proceedings, and to preserve due process rights for all interested parties, the data and

assumptions contained in the report are subject to further verification and revision until officially adopted by the CPUC in the course of a proceeding.

Thus, the Commission may not rely upon the Infrastructure Outlook as a source of undisputed fact for the purposes of resolving disputed issues in this proceeding.

Second Request. PG&E filed a second request for official notice, on February 19, 2002. Wild Goose Storage Inc. (Wild Goose) filed a response and both The Utility Reform Network (TURN) and PG&E filed a reply. The second request for official notice concerns the following:

- An updated version of PG&E's Exhibit 127, Figure 6.3, PG&E Average Daily Sendout 1999-2001 (Updated Figure 6.3).
- A to-scale map, prepared by the Southern California Gas Company (SoCalGas), entitled System Map, Major Pipelines and Major Transmission Lines (SoCalGas Map).

PG&E argues that Updated Figure 6.3 should be recognized to update the record to include data that was unavailable at the close of evidentiary hearings and that the Southern California Gas Company (SoCalGas) Map provides a more accurate representation of the SoCalGas system than the not-to-scale map (Exhibit 19) that Wild Goose introduced at hearing.

Wild Goose's response states:

"[w]hile Wild Goose does not contest the accuracy of the content of the documents at issue, it opposes the request for the Commission to take official notice of these documents because they cannot be used to support the arguments advanced by PG&E ..." (Wild Goose Response at 1.)

As both PG&E and TURN point out in their separate replies, Wild Goose's opposition lacks merit. TURN's reply, which addresses only the SoCalGas Map,

correctly argues that whether the map qualifies for official notice is a different inquiry than whether the map supports PG&E's underlying position. Further, even when the Commission determines to take official notice of certain facts, as PG&E correctly notes, the Commission retains discretion to determine what inferences, if any, should be drawn from them, and what weight they should be given. PG&E's second request for official notice should be granted.

### **Environmental Impact Report (EIR)**

The EIR in this proceeding consists of two documents, the Draft EIR (DEIR) mailed for public comment on March 2002 and the Final EIR (FEIR) released and served on June 2002. For the purposes of identification, I propose to mark the DEIR as Reference Exhibit (Ref. Ex.) B and the FEIR as Ref. Ex. C and to have both documents, so marked, placed in the formal file of this proceeding. Any party who objects to this procedure shall file and serve an appropriate motion on or before June 28, 2002.

Therefore, **IT IS RULED** that:

1. PG&E's first request for official notice, filed January 11, 2002, is granted in part and denied in part. The Commission takes official notice of the facts reported in the Index to Prices and the Executive Update; the Commission declines to take official notice of the Infrastructure Outlook, for the reasons stated herein.
2. PG&E's second request for official notice, filed February 19, 2002, is granted. The Commission takes official notice of the Updated Figure 6.3 and the SoCalGas Map.

3. For the purposes of identification, I propose to mark the DEIR as Ref. Ex. B and the FEIR as Ref. Ex. C and to have both documents, so marked, placed in the formal file of this proceeding. Any party who objects to this procedure shall file and serve an appropriate motion on or before June 28, 2002.

Dated June 17, 2002, at San Francisco, California.

\_\_\_\_\_  
/s/ JEAN VIETH  
Jean Vieth  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Requests for Official Notice and Identifying Environmental Impact Report for the Record on all parties of record in this proceeding or their attorneys of record.

Dated June 17, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.